



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-108**
 Returned goods, allowances, cash discounts

Date last reviewed: **July 22, 1997**

Current Reviewer: **JoAnne Gordon**

Date current review completed: **January 2, 2002**

Is this document being reviewed at this time because of a taxpayer or association request? (If "YES", provide the name of the taxpayer/association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Briefly describe the subject matter of the rule(s):

WAC 458-20-108 explains the business and occupation (B&O) and retail sales tax deductions for returned and defective goods and bona fide discounts. It also explains the deductions available for vehicles returned under the state's "lemon law."

2. Related statutes, interpretive statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories (PTAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered interpretive statements.)

YES	NO	
	X	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
X		Are there any interpretive statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or



		Attorney Generals Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

The following ETAs were reviewed in 1999 with a recommendation that the information be incorporated into WAC 458-20-108:

- **ETA 300.04.219-- Patronage Dividends of Cooperative Associations**
- **ETA 323.04.219-- Refunds by Nonprofit Cooperative association Declared Patronage Refunds**

Information from the following published determinations, Washington Tax Decisions (WTDs) should be incorporated in WAC 458-20-108:

- **Det. No. 00-004, 20 WTD 348 (2001), clarifies that amounts refunded to a customer under an extended warranty for defective goods cannot be deducted from the gross proceeds of sale for B&O tax and sales tax purposes. The sale of an extended warranty is a service taxable activity separate and apart from the retail sale of the property.**
- **Det. No. 98-172E, 18 WTD 387 (1999) and Det. No. 98-183, 18 WTD 220 (1990) addresses whether slotting fees, placement, and other allowances received by grocers represent taxable income or a reduction of the selling price.**

3. Additional information: Identify any additional issues (other than that noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

WAC 458-20-108 is not written in the format preferred by the Department. For example, the rule lacks an introduction identifying the rule’s subject matter.

A discussion about what constitutes the “selling price” of a good or service should be incorporated in the rule.

4. LISTING OF DOCUMENTS REVIEWED: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive statements, and similar



documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented:

Interpretive statements (e.g., ETAs and PTAs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Administrative Decisions (e.g., WTDs):

- **Det. No. 00-004, 20 WTD 348 (2001), determined that refunds or credits for defective goods returned pursuant to an extended warranty do not qualify under Rule 108 as a deduction from the selling price because the extended warranty was not included in the retail selling price.**
- **Det. No. 98-202, 19 WTD 771 (2000), determined that productivity discounts received by taxpayer and used to offset equipment rental/associated costs represented commission income and not a reduction of the selling price.**
- **Det. No. 98-172E, 18 WTD 387 (1999), determined that slotting fees and other payments to grocers for services are subject to service B&O tax as gross income to grocers. Discounts from the selling price or rebates paid to the grocer directly from the party selling the goods to the grocer may be deducted provided the grocer does not perform any service for the payment.**
- **Det. No. 98-183, 18 WTD 220 (1999), determined that slotting fees and placement allowances paid to a grocer for providing shelf space and rebates are payment for services provided and not a reduction of the selling price.**
- **Det. No. 93-069, 12 WTD 589 (1993), determined that the measure of retail sales tax will not be imputed based on vendor price reductions for cellular phones improperly labeled as "rebates" when the retail vendor receives a bona fide commission from the cellular phone company for enrolling the phone purchaser for retail cellular phone service.**
- **Det. No. 89-107, 7 WTD 189 (1989), determined that manufacturer's automobile rebate endorsed by a customer in favor of a dealer, as part of the consideration for the purchase of an automobile, is part of the selling price of the auto and is subject to retail sales tax.**

Attorney General's Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

The following Tax Topics articles were reviewed:



- **October-December 1986, Coupon price reduction: taxable or not?**
- **July-September 1990, Coupons and manufacturer's rebates – are they subject to sales tax?**
- **April-June 1992, Two-for one meal coupons and sales tax**



4. Review Recommendation:

<u> X </u>	Amend
<u> </u>	Repeal (Appropriate when repeal is not conditioned upon another rule-making action.)
<u> </u>	Leave as is (Appropriate even if the recommendation is to incorporate the current information into another rule.)
<u> </u>	Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

As noted in the previous review, WAC 458-20-108 should be revised to incorporate numerous supplemental documents.

5. Manager action: Date: _____

 Reviewed and accepted recommendation

Amendment priority:

- 1
- 2
- 3
- 4